

CHARLES R. NIELSEN
PAULINE NIELSEN

IBLA 77-46

Decided May 26, 1977

Appeal from a decision of the California State Office, Bureau of Land Management, declaring appellants' Bear Mountain Quartz and Bear Mountain Placer Mining claims null and void.

Affirmed.

1. Administrative Procedure: Hearings! ! Mining Claims:
Hearings! ! Mining Claims: Lands Subject to! ! Mining Claims:
Withdrawn Land! ! Rules of Practice: Hearings

A mining claim located on land withdrawn from location under the mining laws is null and void ab initio! ! without legal effect from the beginning. Such a mining claim may properly be declared null and void without a hearing where the records of the Department of the Interior show that the land was withdrawn at the time the claim was located.

APPEARANCES: Charles R. Nielsen and Pauline Nielsen, pro sese.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought from a decision of the California State Office, Bureau of Land Management (BLM), declaring appellants' Bear Mountain Quartz and Bear Mountain Placer Mining claims null and void. The ground for the decision was that the land embraced in the claims was withdrawn from all forms of appropriation under the public land laws, including the mining laws, by public land order prior to the date that appellants allegedly located their claims.

The record discloses that the two mining claims were located on October 15, 1969, and October 27, 1969. Both claims are situated in Lot 2, Sec. 13, T. 4 N., R. 11 E., M.D.M., Calaveras County,

California. Public Land Order 2260 dated February 6, 1961, 26 FR 1185 (1961), withdrew Lot 2 and certain other lands from "all forms of appropriation under the public land laws, including the mining and mineral leasing laws" and reserved the land for the use of the Department of the Army for flood control purposes in connection with the New Hogan Dam and Reservoir.

The record in the case file, including a copy of the master title plat, copies of the location notices of the two claims, and a copy of PLO 2260 as published in the Federal Register, supports the decision of the BLM. Appellants have not controverted the facts established by the record below, but have made what might be construed as a request for a hearing.

[1] It is a fundamental axiom of federal mining law that a mining claim located on land withdrawn from location under the mining laws is null and void ab initio, *i.e.*, without legal effect from the beginning. Jack D. Canon, 30 IBLA 112 (1977); Robert L. Beery, 83 I.D. 249, 25 IBLA 287 (1976); Leo J. Kottas, 73 I.D. 123, 127-128 (1966), *aff'd sub nom.*, Lutzenheiser v. Udall, 432 F.2d 328 (9th Cir. 1970).

A mining claim located on land at a time when the records of the Department of the Interior show that land is withdrawn from location under the mining laws may properly be declared null and void without a hearing. Jack D. Canon, *supra* at 114; W. E. Wicks, 14 IBLA 356, 359 (1974); Leo J. Kottas, *supra* at 127-128. The rationale for this holding is that the claimant cannot possibly produce evidence to prove the validity of a claim upon land that was not open to mineral entry at the time of the attempted location. Leo J. Kottas, *supra* at 128.

Furthermore, a request for a hearing in connection with an appeal will not ordinarily be granted where undisputed facts are of record and the determination rests on legal conclusions based on such facts. Concho Petroleum Company, 22 IBLA 139 (1975).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

